UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL 878, Respondent

Case 15-CB-251221

AND

RUSTY LEEWRIGHT,
An Individual.

MOTION TO DISMISS FOR LACK OF JURISDICTION, AND IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

COMES NOW the Respondent, Teamsters Local 878 ("the Union"), and pursuant to R & R Sec. 102.24, and herein files its Motion to Dismiss for Lack of Jurisdiction, and in the Alternative, Motion for Summary Judgment.

The sole remedy sought in this matter is for the Respondent to welcome the Charging Party, Rusty Leewright ("Charging Party" or "Leewright") back as a member in the Union, after he had previously resigned. With the help of the General Counsel, the Charging Party has created the ruse that he wants to re-join the worthless union that he is telling all his co-workers he hates, and now the Board is being asked to join in the ruse. It should decline. There is no allegation that the Charging Party has been adversely affected by his non-member status in any way, including in his employment, which non-membership status was caused by his preceding resignation. Now that he claims with a wink that he seeks to be reinstated, the General Counsel has seen fit to champion his cause.

While there are numerous factual reasons to not allow the Charging Party to return to membership after he resigned, including, but not limited to, his constant use of racist epithets and

threats of violence in the workplace, the law does not allow the General Counsel to litigate membership status, which is solely governed by the Labor Management Reporting and Disclosure Act. 29 USC Section 401 *et. seq*.

Moreover, even if every single allegation in the instant Complaint is sustained, the Remedy sought by the General Counsel, forcing a union to accept a member and usurping the union's internal procedures, Local Union Bylaws, and International Union Constitution, is prohibited by law.

For the reasons detailed herein, the Complaint should be summarily dismissed for lack of subject matter jurisdiction. In the alternative, summary judgment should be granted, as there is no genuine dispute as to any material fact and the Union is entitled to judgment as a matter of law.

I. FACTS

On May 1, 2018, the Charging Party, in writing, voluntarily resigned his membership from the Union. (Withdrawal Letter, Exhibit "A"). On May 14, 2018, the Union confirmed that Leewright's membership was forfeited. (Union Confirmation Letter, Exhibit "B").

In 2019, the Charging Party filed a slew of Board Charges against the Union that have since been closed and found non-meritorious, including Charges 15-CB-241464 (filed 5/15/19; dismissed 9/24/19); 15-CB-248839 (filed 9/19/19; withdrawn 12/12/19); 15-CB-249717 (filed 10/10/19; withdrawn 12/11/19); and 15-CB-249721 (filed 10/10/19; withdrawn 12/12/19).

On November 5, 2019, the Charging Party filed Charge 15-CB-251221, presumably initiated by the investigating agent after the others were found lacking merit.

The Charge alleges as follows:

> Since in [sic] or about October 2019, the above-named labor organization has restrained and coerced employees in the exercise of rights protected by Section 7 of the Act by failing to allow Employee Rusty Leewright to rejoin the Union.
>
> Since in [sic] or about October 2019, the above-named labor organization through Union President Tim Nichols has restrained and coerced employees in the exercise of rights protected by Section 7 of the Act by failing to respond to Employee Rusty Leewright's attempts to contact him.

On April 8, 2020, the Region issued Complaint and Notice of Hearing on Charge 15-CB-251221. On April 10, 2020, the Region withdrew its Complaint and Notice of Hearing. On May 27, 2020, the Region re-issued Complaint. The re-issued Complaint alleges:

> 8(a) Since about October 2019, Respondent has refused to allow Leewright to join Respondent as a member.
>
> (b) Respondent engaged in the conduct described above in paragraph 8(a) because Respondent believed Leewright informed employees of their rights protected by the Act.
>
> 9. By the conduct described above in paragraph 8, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

The Union filed its Answer to the Complaint on June 1, 2020. A hearing in this matter is currently scheduled for June 14, 2021.

II. ARGUMENT

A. Background.

Section 8(b)(1)(A) of the Act states that "[i]t shall be an unfair labor practice for a labor organization or its agents—

> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

The Board has long held that "Congress did not intend that Section 8(b)(1)(A) be given the broad application accorded Section 8(a)(1). 1949 NLRB ANNUAL REPORT 81 (1950).

"Section 8(b)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof--conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes." *NLRB v. Teamsters Local 639 (Curtis Bros.)*, 362 U.S. 274, 290 (1960).

Congress intended for membership selection to remain an internal union matter, as reflected by Section 8(b)(1)(A)'s proviso that the section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . ." Thus, both the Board and the courts have long found that suspension and even expulsion of current (not former) members from membership is not restraint or coercion under Section 8(b)(1)(A). *American Newspaper Publishers Ass'n v. NLRB*, 193 F.2d 782 (7th Cir. 1951), *enforcing* 86 NLRB 951 (1949); NLRB Gen. Counsel Admin. Ruling F-862, 44 LRRM 1113 (1959).

B. The Board has no jurisdiction over membership status, which is governed exclusively by the LMRDA.

The law does not allow the General Counsel to litigate membership status, which is governed by the LMRDA, 29 USC Section 401 *et. seq*. In *Sandia National Labs*, one of the two cases cited by General Counsel in support of its position, the Board found that it had no jurisdiction over the respondent union's decision to demote, expel, and suspend certain members and officers because such matters were intraunion decision-making regulated under the LMRDA. *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000).

The Board stated:

> [W]e note that there is, of course, a forum for resolving purely intraunion quarrels concerning the propriety of intraunion decision making. That forum is a cause of action under the LMRDA. Congress gave to the federal district courts, not to the Board, authority to hear and decide suits brought by union members to enforce rights under the LMRDA and that is the appropriate forum for the Charging Parties in this case to pursue their complaints against the Respondent. . . . [W]hen the Board injects itself into matters

> regulated under the LMRDA it is not only acting in contravention of Congress's decision to confer jurisdiction over LMRDA claims on the Secretary of Labor and the Federal district courts, rather than the Board, but it is also creating the very real risk that its interpretations of the requirements of the LMRDA will conflict with those of the Secretary and the courts. . . .

Id. at 1425. *See also NLRB v. Allis-Chalmers Mfg. Co.,* 388 U.S. 175, 195 (1967) ("Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status."); *NLRB v. Boeing Corp.*, 412 U.S. 67, 78 (1973) ("[W]hen the union discipline does not interfere with the employee-employer relationship or otherwise violate a policy of the National Labor Relations Act, the Congress did not authorize it 'to evaluate the fairness of union discipline meted out to protect a legitimate union interest.'"); *Minneapolis Star & Tribune Co.,* 108 NLRB 727, 729, 738 (1954) ("It is "well established" that Section 8(b)(1)(A) generally precludes Board interference with the union internal affairs in the absence of an effect on employment[.]"); *Teamsters Local 122*, 203 NLRB 1041, 1042 (1973) ("Expulsion from membership in a labor organization is a matter of internal union concern, and does not in and of itself give rise to a violation of the Act.").

The Board affirmed its holding in *Sandia* when it held in *Textile Processors Employees, Local 311*, that it had no jurisdiction over a charge alleging a respondent union refused to accept a charging party's tender of union membership dues that resulted in the charging party being removed from union membership status. 332 NLRB 1352 (2000). The charging party's loss of membership privileges was a "strictly internal union matter[]" that fell "outside the all the categories of conduct that appropriately may invoke the proscriptions of Section 8(b)(1)(A)." *Id.* at 1354. The Board concluded that "the Act does not contain any proscription against [a union's] refusal to accept dues on account of a [charging party's] purely internal activity." *Id.*

Here, as in *Sandia* and *Textile Processors Employees*, the decision of the Union to refuse membership status to Leewright is an intra-union decision that falls squarely outside the Board's jurisdiction.

C. A union cannot run afoul of Section 8(b)(1)(A) by denying membership to a non-member who has already voluntarily resigned his membership.

It is undisputed that Leewright was a non-member who had already voluntarily resigned from the Union before attempting to re-join. A union cannot "discipline" non-members for purposes of Section 8(b)(1)(A) with expulsion. *NLRB v. Machinists Dist. Lodges 99 & 2139 (General Elec. Co.)*, 489 F.2d 769 (1st Cir. 1974), *denying enforcement to* 194 NLRB 938, 79 LRRM 1208 (1972); *Food & Commercial Workers Local 81 (Macdonald Meat Co.)*, 284 NLRB 1084, 1085-86 (1987). As the Supreme Court has noted, "[W]hen there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street." *NLRB v. Textile Workers Local 1029, Granite State Joint Bd. (International Paper Box Mach. Co.)*, 409 U.S. 213, 217 (1972). *See Scofield v. NLRB*, 394 U.S. 423 (1969) (upholding union rule that allowed discipline of members who worked behind a picket line provided that the members were "free to leave the union and escape the rule.").

The Board clarified in *MacDonald Meat Co.* that "[e]xpelling or suspending someone who has already signified that he does not wish to be a member of the organization from which he is being expelled or suspended is [] less coercive and it is precisely the kind of action that, as indicated in the legislative history of the proviso, Congress wished to leave unions free to take with relative impunity." Because "only actions by a union that constitute restraint or coercion are prohibited" by 8(b)(1)(A), "absent some threat of monetary penalty, suspending or expelling those who have signified their intent not to belong to the union, in [the Board's] view, does not tend to coerce or restrain them." *Id.* at 1086.

The Board elaborated:

> Principles of voluntary unionism invoked in those cases logically apply to all parties to an association; accordingly, just as, in vindication of Section 7 rights, we have protected resigning employees from compelled association with other union members so, in vindication of the interests protected by the proviso, we should protect the union members who choose to stay from compelled association with those who choose to leave. As a practical matter, this means simply that the union is free to announce that it is removing the resigning employee from eligibility for membership for either a certain period (time-specified suspension) or indefinitely (expulsion or indefinite suspension). In our view, this effectuates an important policy of the proviso and does no evident harm to any other policy of the labor laws.

Id.

General Counsel has thus far relied on *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2000) and *Service Employees Local 254 (Brandeis University)*, 332 NLRB 1118, 1120 (2000), to conclude that the Union here violated the Act. Both *Sandia* and *Brandeis University* define when it is permissible for a union to impose discipline *on its own members* under Section 8(b)(1)(A). There is no Board precedent that would extend the *Sandia* and *Brandeis* logic to *non-members*. The precedent cited above makes it apparent that a Union cannot restrain or coerce former members who voluntarily resign membership by denying them the opportunity to re-join. General Counsel had no authority to issue Complaint over the acts alleged in the Charge, which involve a non-member who has alleged that he was denied the opportunity to re-join the union. For this reason, the Charge should be summarily dismissed.

D. No policy imbedded in the Act was impaired by the Union's actions.

There are no allegations in the Charge or Complaint that would indicate the Union otherwise ran afoul of the Act by denying Leewright's request to re-join. As General Counsel previously noted, the Board held in *Brandeis University* that discipline of a member is within the reach of Section 8(b)(1)(A) if the discipline falls into one of four enumerated categories. In this case, there is no indication that the Union's refusal to allow Leewright to re-join the Union

impacted his relationship with his employer, impaired his access to the Board's processes, involved violence or other unacceptable methods of coercion, or impaired policies embedded in the Act.

With respect to a union's impairment of policies embedded in the Act, Footnote 5 of the *Brandeis University* decision states the following:

> . . . .The dissent in *Sandia* argued that the intraunion discipline there impaired a policy of the Act because it interfered with the Sec. 7 right to concertedly oppose the policies of union officials. The Board rejected this argument and held, instead:
>
> > [T]he right to concertedly oppose the policies of union officials is protected by Section 7 if that activity is "for the purpose of collective bargaining or other mutual aid or protection . . . ." That protection is broad but not unlimited and it assumes that the activity bears some relation to the employees' interests as employees. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 567-568 (1978); *Firestone Steel Products Co.*, 244 NLRB 826, 827 (1979); *Trover Clinic*, 280 NLRB 6 (1986); and *Southern California Gas Co.*, 321 NLRB 551, 555-557 (1996). **Furthermore, ... the central theme of both the Supreme Court's 8(b)(1)(A) decisions and of Board's 8(b)(1)(A) cases prior to Graziano is that that section was not enacted to regulate the relationship between unions and their members unless there was some nexus with the employer-employee relationship and a violation of the rights and obligations of employees under the Act.** [Sandia, supra , slip op. at 8 (italics in original).]

332 NLRB 1118, fn. (2000) (emphasis added).

With regards to what rights of employees are deemed "embedded in the labor laws," the Board has stated:

> [T]he mere fact that the discipline is in reprisal for [exercise of] a Section 7 right is not sufficient to condemn the discipline. *See Allis-Chalmers* [*NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967)]. However, if the Section 7 right [exercised] is the fundamental one of seeking access to the Board, the discipline . . . may be unlawful.

Boilermakers (Kaiser Cement Corp.), 312 NLRB 218, 220, 144 LRRM 3105 (1993).

In *Smith v. Local No. 25*, the Fifth Circuit affirmed that a union did not breach its duty of fair representation when it suspended and expelled union members for a failure to pay dues

because such actions did not interfere with the employment relationship. 500 F.2d 741 (5th Cir. 1974). The Court noted:

> Appellants have not suggested that their failure to pay dues is not a proper basis for suspension or expulsion from membership. Nor do they contend that the duty of fair representation imposes upon a union *the duty to open wide its doors to anyone.*

Id. at 750, emphasis added. Because the claim of the former members did not "demonstrate any injury to the employment relationship or to rights granted by the National Labor Relations Act," the union's actions did not constitute a breach its duty to represent bargaining unit members fairly in their dealings with the employer. *Id.* Here, no such interference with the employment relationship has been alleged. The GC here is doing exactly what the Fifth Circuit proscribed, trying to impose on the union "the duty to open wide its doors to anyone."

Discipline for activity protected by rights "embedded" in the Act has generally been found unlawful only under two scenarios by the Board: (1) where unions fine or expel members for filing unfair labor practice charges; and (2) where unions threaten members with intraunion charges for testifying against other members at arbitration. The Board has never extended the "embedded in the Act" prong outside these two very limited scenarios—which again, both involve members, not non-members.

At no time has it ever been alleged in the instant case that the Union has prevented Leewright, a non-member, from seeking access to the Board or from testifying against anyone at arbitration. **Further, there is no nexus to employment whatsoever, as required by *Sandia and Brandeis.*** The only action the Union has taken against Leewright is a refusal to allow him to re-join, after he quit.

E. The Union has the right to determine membership eligibility.

Even if the Union's motion to dismiss could not be granted based on the arguments raised *supra*, it would be appropriate to grant summary judgment in the instant case because as a matter of law, the Union's legitimate interests in maintaining control over its membership would far outweigh any of Leewright's Section 7 rights. In looking at the suspension of a dissident steward that inappropriately handled grievances, refused to cooperate with other stewards and failed to disclose information to the business agent, the Board found that the suspension did not impair access to the Board's processes, involve violence or other unacceptable methods of coercion, or impair policies imbedded in the Act (as the General Counsel argues here). *United Steelworkers of America Local 9292*, 336 NLRB 52, 168 LRRM 1492 (2001). When discussing whether the suspension would impact the employee's relationship with his employer, the Board called the argument "tenuous."

However, the Board in the USWA Local 929 case found it unnecessary to determine whether any of the *Brandeis University* factors were present because the employee at-issue was not deprived of any of his Section 7 rights by the suspension from membership.

> . . . [The employee] has other means available to exercise his Section 7 right to pursue changes in working conditions and to influence his union representative's bargaining policies. He can, of course, continue to file grievances. He can initiate a decertification effort or rival union campaign. And, significantly, he can pursue legal claims that the Union mishandled his grievances, in breach of its duty of fair representation.

Id. at 54-55. Because the Union's "legitimate interest in maintaining control over the grievance process and in policing its internal affairs so as to avoid erosion of its status" outweighed any Section 7 rights of the employee, the Board found no violation of the Act.

Similarly, in *Brandeis University*, the case cited General Counsel, the Board found that the union's interests in "speaking with one voice" and maintaining control over its membership

outweighed the Section 7 rights of a dissident steward. 332 NLRB 1118 (2000). *See also Local 254, Service Employees International Union*, 332 NLRB 1118, 1122-1123 (2000) (a "union is legitimately entitled to hostility or displeasure toward dissidence in such positions where teamwork, loyalty, and cooperation are necessary to enable the union to administer the contract and carry out its side of the relationship with the employer.").

Respondent had a litany of reasons unrelated to Leewright's Section 7 rights to deny him the privilege of re-joining:

1) Making unfounded allegations to the international office and other union halls that his grievances weren't being heard by the local (Nichols Aff. p. 2);
2) Constantly interfering with the Business Agent Summers' handling of grievances with the local hearings by "not directly answer[ing] questions", making "off the wall comments and responses" and giving "incoherent statements in response to questions being asked of him." (*Id.*, p. 4);
3) Using "racially derogatory remarks about minority female employees he works with" -- i.e., calling them "black bitches" -- and "fail[ing] to grasp that he had done something wrong," despite the efforts made by UPS Human Resources and Mr. Nichols to intervene (*Id.*);
4) Bringing "reproach upon the Teamsters through this actions and behavior," (*Id.* p. 5); and
5) Causing employees at the Employer's facility to believe that he "could be a mass shooter" and instilling fear in the ladies in the Union office due to his odd behavior (*Id.*).

The Union's interest in denying membership to Leewright was indisputably legitimate. It is apparent from Leewright's past behavior that his only motivation in joining the union is to

cause chaos and disorder and to damage morale within the membership. Any suggestion that the Union may have excluded from Leewright from membership on some protected basis is far outweighed by the Union's interests in ensuring that its members remain safe and that its meetings and grievance hearings are conducted in an orderly manner, an area of law and conduct that is not within the Board's legal purview.

CONCLUSION

The Union has the right to conduct its own internal affairs and determine its own membership rules under the Act. Such actions are governed exclusively by the LMRDA and are outside the Board's jurisdiction under Section 8(b)(1)(A). Both the Board and the courts have made abundantly clear that any protections 8(b)(1)(A) would afford to members who are expelled or suspended are not extended to non-members who voluntarily resign their membership before any disciplinary action is taken. There have never been any allegations made that the Union's actions towards Leewright somehow otherwise impaired any policy imbedded in the Act. At no point has Leewright or the General Counsel alleged that his employment relationship was somehow affected by the Union's actions, or that he suffered any monetary losses whatsoever.

WHEREFORE, Respondent Union requests that Charge 15-CB-251221 be dismissed, as the Board lacks jurisdiction for the aforementioned reasons. In the alternative, the Respondent Union requests that its motion for summary judgment be granted, as there is no genuine dispute as to any material fact and the Union is entitled to judgment as a matter of law.

Respectfully submitted,

SAMUEL MORRIS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer to Complaint has been sent via email and by U.S. Mail, postage prepaid, this 16th day of April, 2021 to:

Tim Nichols, President
International Brotherhood of Teamsters
Union Local 878
Email: teamster878@hotmail.com

Rusty Leewright
Email: eclectus6@suddenlink.net

John Johnson, HR
United Parcel Service
5501 Fourche Dam Pike
Little Rock, AR 72206-2600

Nariéa K. Nelson
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National Labor Relations Board, Region 15
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Nariea.Nelson@nlrb.gov

SAMUEL MORRIS

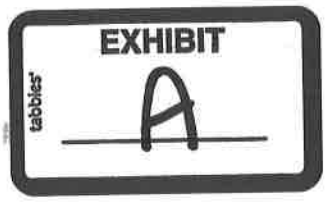
Date: May 1, 2018

Teamsters Union local 878

I am resigning my union membership effective immediately. The Teamsters Union is no longer, effective immediately, permission to withdraw any amount of union dues from my UPS employment paycheck. If any dues are taken out of my UPS paycheck on and after May 1, 2018, I demand a full refund of all union dues. I also request a withdrawal card from the Teamsters local 878 union mailed to my present home address printed on this letter. A copy of this letter will be hand delivered to the Human Resources Department on May 1, 2018 on my twilight shift at the address of my employment at United Parcel Service 5501 Fourche Dam pike Rd little Rock Arkansas.

Rusty Leewright
135 Weathering Dr
Austin, Arkansas 72007-9700

UNION EXHIBIT



Rusty Leewright
135 Weathering Dr.
Austin, AR 72007-9700

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w/ union

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UNION EXHIBIT # 2-17

Chauffeurs, Teamsters and Helpers
Local Union No. 878

6000 Patterson Avenue
P.O. Box 190070
Little Rock, Arkansas 72219

Business (501) 562 - 2020
Fax (501) 565 - 0804
www.teamsters878.com

May 14, 2018

Rusty Leewright
135 Weathering Dr.
Austin, AR 72007-9700

Dear Mr. Leewright,

I am writing to inform you that I have received your request to forfeit your membership with Teamsters Local 878. Your request has been approved.

On **May 14, 2018** your membership to Teamsters Local 878 will be forfeited. According to the contract you signed I cannot remove you from the dues statement until that date.

If you have any questions or concerns, please do not hesitate to contact me.

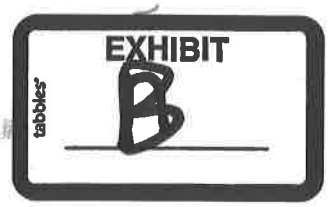
Thank you,

Kimberly Sumers

Kimberly Sumers
Sec-Treasurer
Teamsters Local 878

CERTIFIED MAIL: 7016 0910 0001 6613 0977

UNION EXHIBIT



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Rusty Leewright
135 Weathering Dr.
Austin, AR 72007-9700

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☐ Addressee

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